

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Legend:

Fund 1 =

Fund 2 =

Fund 3 =

Fund 4 =

Fund 5 =

Fund 6 =

Fund 7 =

Trust =

State =

Advisor =

Accountant =

Officer =
Date 1 =
Date 2 =
Date 3 =
Date 4 =
Date 5 =
Date 6 =
Month 1 =
Month 2 =
Year 1 =
Year 2 =

Dear :

This is in reply to a letter dated July 1, 2009, requesting on behalf of Fund 1, Fund 2, Fund 3, Fund 4, Fund 5, Fund 6, and Fund 7 ("Funds") an extension of time under section 301.9100-1 of the Procedure and Administration Regulations to, in the case of each Fund, make an election under § 855 of the Internal Revenue Code; and in the case of Fund 3, Fund 5, and Fund 6, an election under § 853.

FACTS

Trust is a State business trust registered as an open-end diversified management investment company under the Investment Company Act of 1940, 15 U.S.C. § 80a-1, et seq., as amended (the 1940 Act). Each Fund is a series of Trust and registered as an open-end investment company under the 1940 Act. Each Fund elected to be taxed as a regulated investment company (RIC) pursuant to § 851 and has operated in a manner intended to qualify as a RIC.

Each Fund intended to make an election under § 855(a) to treat certain dividends paid in the taxable year ending Date 4 as having been distributed in the taxable year

ended Date 1. Fund 3, Fund 5, and Fund 6 each intended to also make an election under § 853 to have their shareholders treated as if they had paid their proportionate share of certain foreign taxes paid by Fund 3, Fund 5, and Fund 6 for the taxable year ended Date 1. Funds have consistently made the elections under §§ 853 and 855(a) in prior years.

Funds intended to file Forms 7004, Application for Automatic 6-Month Extension of Time to File Certain Business Income Tax, Information, and Other Returns (Form 7004), to extend the due date of Funds' Forms 1120-RIC, U.S. Income Tax Return for Regulated Investment Companies (Form 1120-RIC). As discussed below, the Forms 7004 were not filed. Therefore, the elections were due Date 2, the due date, without extensions, of the Forms 1120-RIC.

Advisor acts as Funds' tax matters administrator. In that capacity, Advisor engaged Accountant to prepare and file federal income tax returns for Funds. Officer is responsible for the final review of Funds' returns and for overseeing the timely execution and filing of the returns, including elections.

Due to the illness and resignation of multiple key employees of Accountant, the Forms 7004 were prepared but never filed. In Month 2 of Year 1, Accountant hired a new vice president (Vice President). Vice President discovered the unfiled Forms 7004 during Month 1 of Year 2 and immediately notified Officer.

On Date 5, Funds received a notice from the Internal Revenue Service (the Service) notifying them that the Service had not received Funds' returns for the taxable year ended Date 1. The returns for the taxable year ended Date 1 were prepared as if there had been timely elections under §§ 853 and 855(a), and were filed on Date 6.

Each Fund has submitted the affidavit of Officer and Vice President in support of this requested ruling.

Each Fund makes the following representations:

1. The request for relief was filed by Funds before the failure to make the regulatory election was discovered by the Service.
2. Granting the relief will not result in Funds having a lower tax liability in the aggregate for all years to which the regulatory election applies than Funds would have had if the election had been timely made (taking into account the time value of money).
3. Funds do not seek to alter a return position for which an accuracy-related penalty has been or could have been imposed under § 6662 of the Code at the

time Funds requested relief and the new position requires or permits a regulatory election for which relief is requested.

4. Being fully informed of the required regulatory election and related tax consequences, Funds did not choose to not file the election.

LAW AND ANALYSIS

Section 853(a) of the Code provides that if more than 50% of the value of a RIC's assets at the close of the taxable year consist of stock or securities in foreign corporations, and the RIC meets the requirements of § 852(a) for the taxable year, the RIC may elect to have its shareholders treated as if they had paid their proportionate share of certain foreign taxes paid by the RIC. Section 1.853-4 of the Income Tax Regulations provides that an election under § 853 must be made not later than the time prescribed for filing the RIC's return (including extensions) and is irrevocable with respect to the dividend (or portion thereof), and the foreign taxes paid with respect thereto, to which the election applies.

Under § 855(a) of the Code, if a RIC declares a dividend before the due date (including extensions) for filing its income tax return for a taxable year, and distributes the dividend in the 12-month period following the end of the tax year (and not later than the date of the first regular dividend payment made after the declaration), the dividend is considered paid during the taxable year, if the RIC so elects on its income tax return for the taxable year. Under section 1.855-1(b)(1), the election under § 855(a) of the Code must be made in the return filed by the RIC for the taxable year.

Section 301.9100-1(c) of the regulations provides that the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election (defined in section 301.9100-1(b) as an election whose deadline is prescribed by regulations or by a revenue ruling, a revenue procedure, a notice, or an announcement published in the Internal Revenue Bulletin), or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-3(a) through (c)(1)(i) of the regulations sets forth rules that the Service generally will use to determine whether, under the facts and circumstances of each situation, the Commissioner will grant an extension of time for regulatory elections that do not meet the requirements of section 301.9100-2. Section 301.9100-3(b) provides that subject to paragraphs (b)(3)(i) through (iii) of section 301.9100-3, when a taxpayer applies for relief under this section before the failure to make the regulatory election is discovered by the Service, the taxpayer will be deemed to have acted reasonably and in good faith; and section 301.9100-3(c) provides that the interests of the government are prejudiced if granting relief would result in the taxpayer having a lower tax liability in the aggregate for all years to which the regulatory election applies.

than the taxpayer would have had if the election had been timely made (taking into account the time value of money).

CONCLUSION

Based upon the facts and representations submitted, we conclude that each Fund has shown good cause for granting a reasonable extension of time to make the elections under § 855(a). In addition, Fund 3, Fund 5, and Fund 6 have shown good cause for granting a reasonable extension of time to make the elections under § 853. Accordingly, each Fund's income tax return for the taxable year ending Date 1, which has already been filed, is treated as timely filed for purposes of making the elections under §§ 853 and 855(a).

This ruling is limited to the timeliness of the filing of each Fund's income tax return for purposes of the elections under §§ 853 and 855(a). This ruling's application is limited to the facts, representations, Code sections, and regulations cited herein. No opinion is expressed with regard to whether any Fund otherwise qualifies as a RIC under subchapter M of the Code.

No opinion is expressed with regard to whether the tax liability of a Fund is not lower in the aggregate for all years to which the election applies than such tax liability would have been if the election had been timely made (taking into account the time value of money). Upon audit of the federal income tax return involved, the director's office will determine such tax liability for the year involved. If the director's office determines that such tax liability is lower, that office will determine the federal income tax effect.

Except as specifically provided otherwise, no opinion is expressed on the federal income tax consequences of the transaction described above.

This ruling is directed only to the taxpayers that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the terms of a power of attorney on file in this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Susan Thompson Baker

Susan Thompson Baker
Assistant to the Branch Chief, Branch 2
Office of Associate Chief Counsel
(Financial Institutions & Products)